IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NOs: 3397 and 14817 of 2004

W.P.NO. 3397 of 2004

Between:

Umesh Chandra Nokwal S/o Balakrishna Nokwal
R/o 14-7-159, Jagnnath Dwara, Begum Bazar, Hyderabad

..... PETITIONER

AND

1 The District Educational Officer, Hyderabad
2 The Regional Joint Director of School Education, Kachiguda, Hyderabad
3 The Commissioner & Director of School Education, A.P., Hyderabad
4 The Correspondent, Marwadi Hindi Vidyalaya (Aided), Begum Bazar, Hyderabad
5 B. Ravi, Attender, Marwadi Hindi Vidyalaya (Aided), Begum Bazar, Hyderabad

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more in the nature of Mandamus declaring that the petitioner is entitled for compassionate appointment in the existing vacancy of Record Assistant in Marwadi Hindi Vidyalaya, Begum Bazar, Hyderabad in preference to the 5th respondent in accordance with the proc. Rc. No. 5603/D2-4/03 dt 7-11-2003 of commissioner &director of school education dehorse the proc. Rc. No. 4007/A1/2003, dt 12-9-2003 issued by the Regional Joint Director of School Education, Hyderabad (Not-communicated to petitioner) as the same is contrary to the directions issued bythe commissioner and Director of School Education in proc.Rc. No. 5603/D2-4/2003, dt 7-11-2003.

Counsel for the Petitioner: MR.P.SUDHAKAR REDDY

Counsel for the Respondents 1 to 3: GP FOR SCHOOL EDUCATION

Counsel for the Respondent No.4: MR. PRATAP NARAYAN SINGH

Counsel for the Respondent No.5: MR. CH.JAGANNADHARA RAO

W.P.NO.14817 of 2004

Between:

B.Ravi, s/o B.Rama Swamy,
O/o Marwadi Hindi Vidyalaya Aided High School, Hyderabad.

..... PETITIONER

AND

1 The Commissioner and Director of School Education, A.P.,Hyderabad.
2 The Regional Joint Director of School Education, Kachiguda, Hyderabad.
3 The District Educational Officer, Hyderabad.
4 The Correspondent Marwadi Hindi Vidyalaya (Aided) Begum Bazar, Hyderabad.
5 Umesh Chandranokwal, s/o Balakrishanokwal,
R/o H.No.14-7-159, Jagannathdwara, Begum Bazar, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more in the nature of mandamus declaring the impugned proceeding Rc.No.5603/D2-4/2003 dated 7-11-2003 issued by the Commissioner and Director of School Education, A.P.Hyderabad as illegal, void, by holding the action of the 1st respondent in issuing the proceeding dated 7-11-2003 directing the 2nd respondent to consider the case of the 5th respondent for compassionate appointment after a lapse of 14 years from the date of expiry of his father is highly illegal, unjust and opposed all principles of equity justice and fair play.

Counsel for the Petitioner: MR.CH.JAGANNADHA RAO

Counsel for the Respondents 1 to 3: GP FOR EDUCATION

Counsel for the Respondent No.4: MR PRATAP NARAYAN SINGH

Counsel for the Respondent No.5: MR P.SUDHAKAR REDDY

The Court made the following:

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COMMON ORDER:

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Since the issue involved in these two writ petitions is interconnected, they are being disposed of by a common order.

W.P.No.3397 of 2004 is filed for declaration that the petitioner is entitled for compassionate appointment in the existing vacancy of Record Assistant in the fourth respondent-institution, in preference to the fifth respondent in accordance with the proceedings in Rc.No.5603/D2-4/2003, dated
07-11-2003 of the Commissioner and Director of School Education dehorse the proceedings in Rc.No.4007/A1/2003, dated 12-09-2003 issued by the Regional Joint Director of
School Education, Hyderabad, as the same is contrary to the proceedings issued by the Commissioner and Director of School Education, dated 07-11-2003. Whereas, W.P.No.14817 of 2004 is filed for declaration of the proceedings in Rc.No.5603/D2-4/2003, dated 07-11-2003 issued by the Commissioner and Director of School Education, A.P. Hyderabad, as illegal by holding the action of the first respondent in issuing the proceedings dated 07-11-2003 directing the second respondent to consider the case of the fifth respondent herein for compassionate appointment after lapse of 14 years from the date of expiry of his father is illegal and arbitrary.

The brief facts that are necessary for the disposal of these writ petitions may be stated as follows:

The case of the petitioner in W.P.No.3397 of 2004 is that his father expired on 29-07-1989 while working as a Headmaster in the fourth respondent-school. The petitioner passed
10th class and Hindi Typewriting Higher and therefore he made a representation to the fourth respondent for providing compassionate appointment along with the representation of her mother. Thereafter, one Record Assistant post fell vacant as one Raghukanth Rao, Record Assistant retired from service on attaining the age of superannuation dated 31-08-2001. Without considering the representation of the petitioner, the fourth respondent-school issued orders promoting the fifth respondent as Record Assistant and the second respondent also issued Proceedings in Rc.No.4007/A1/2003, dated 12-09-2003 according approval for promotion of the fifth respondent as
Record Assistant, which is not communicated to the petitioner. As the petitioner made a representation to the third respondent requesting to consider his case for

compassionate appointment as Record Assistant, the third respondent issued Proceedings in Rc.No.5603/D2-4/2003, dated 07-11-2003 directing the second respondent to appoint him in the existing post of Record Assistant in the fourth respondent-school. The third respondent also issued Proceedings Rc.No.4936/D2-4/2003-1, dated
04-11-2003 requesting the first respondent not to communicate the promotion orders to the fifth respondent as Record Assistant till the claim of the petitioner is disposed of.

It is also stated that in the meanwhile, the fifth respondent without impleading the petitioner as party respondent filed W.P.No.1767 of 2004 before this Court for declaration that he
is entitled for promotion to the post of Record Assistant from
01-09-2001 with all consequential benefits in terms of the proceedings, dated 12-09-2003, issued by the second respondent. This Court disposed of the writ petition directing to implement the proceedings of the second respondent, dated
12-09-2003. He further stated that the proceedings in Rc.No.4007/A1/03, dated 12-09-2003 issued by the second respondent stand merged in the appellate order of the third respondent, dated 07-11-2003 directing his appointment as Record Assistant on compassionate grounds and therefore the orders of the second respondent dated 12-09-2003 does not survive. He further submits that the order in W.P.No.1767 of 2004 would not be binding on him since he is not a party respondent in the said writ petition and filling up of the post of Record Assistant is the subject matter of rival claim. Hence, he prays to allow the writ petition.

A detailed counter affidavit is filed by the fourth respondent stating that the representation of the petitioner cannot be considered in view of the fact that the other son of the deceased employee was already gainfully employed as a Secondary Grade Teacher in the fourth respondent-school, wherein the petitioner is seeking compassionate appointment. The application of the petitioner for compassionate appointment was processed by the competent authority and the same was rejected by the second respondent vide proceedings in Rc.No.144/37466/D4/90, dated 16-02-1991, which remained unchallenged by the petitioner and the same has become final. It is further stated that the father of the petitioner died on
29-07-1989 and after lapse of more than 14 years, the same is hopelessly barred by limitation as repeatedly held by this Court as well as the Apex Court that even for an

inaction one had to necessarily approach the Court within a reasonable time. Therefore, on the ground of delay and laches the writ petition is liable to be dismissed.

The fifth respondent was appointed as an Attender in the fourth respondent-school on 19-10-1984 and he was eligible and qualified for the promotion of Record Assistant. Therefore, as one Record Assistant post fell vacant due to retirement of one Raghukanth Rao, Record Assistant on 31-08-2001, on attaining the age of superannuation, the fifth respondent made representation for his promotion as Record Assistant and his case was considered and was promoted as Record Assistant vide proceedings dated 15-04-2004, which was also approved by the third respondent vide proceedings dated 12-09-2003 and therefore the promotion of the fifth respondent is not illegal and arbitrary. Hence, he prays to dismiss the writ petition.

The petitioner filed a reply affidavit stating that he made representation to the fourth respondent for compassionate appointment in terms of G.O.Ms.No.604, dated 20-06-1979.

The fourth respondent-school categorically stated that the petitioner had applied for compassionate appointment as

Record Assistant in time as prescribed by the department i.e., within one year. It is stated that in Circular Memo No.60681/Ser.A/2003-1, GAD, dated 12-08-2003, it is clearly mentioned that if there is no vacancy in the unit of appointment, such cases shall be sent to the District Collector who is the nodal authority to make compassionate appointment and for allotment of candidates to any of the departments at the district level.

Therefore, the District Educational Officer, instead of intimating the fourth respondent that his case for compassionate appointment as Record Assistant cannot be considered as there is no vacancy, should have referred his case to the District Collector to consider his case for appointment in any other institution.

It is also stated by him that in spite of making representations from time to time including the representations dated 05-03-1993, 15-11-1995, 17-06-1998 and 26-11-2001 to consider his case for compassionate appointment as there is clear retirement vacancy of Record Assistant from 31-08-2001, the fourth respondent who

earlier recommended his case for compassionate appointment has illegally promoted the fifth respondent, which is illegal and arbitrary.

The case of the petitioner in W.P.No.14817 of 2004 is that initially he was appointed as an Attender on 19-10-1984 in the fourth respondent-school. Thereafter, a post of Record Assistant fallen vacant in the fourth respondent-school from 01-09-2001 due to retirement of Sri Raghukanth Rao, Record Assistant, on attaining his age of superannuation by 31-08-2001. He made a representation to the respondents and in pursuance of the same, the fourth respondent promoted him as Record Assistant
w.e.f. 01-09-2001, which was also approved by the second respondent. Though the claim of the fifth respondent for compassionate appointment has been rejected by the third respondent, he did not choose to file any appeal and after lapse of 14 years, he seems to have made a representation directly to the first respondent and got issued impugned proceedings dated 07-11-2003 for collateral considerations. Though the Regional Joint Director of School Education issued proceedings dated
12-09-2003 in approving my promotion to the post of Record Assistant, the District Educational Officer has not issued the consequential orders to enable the petitioner to draw his salary in the post of Record Assistant. The fifth respondent has never filed any appeal or objections against the proceedings dated
12-09-2003 issued by the second respondent, wherein his promotion orders were approved. Therefore, without cancelling the promotion approval orders dated 12-09-2003, the first respondent has no power or jurisdiction to issue the impugned proceedings dated 07-11-2003 directing the second respondent to consider the case of the fifth respondent to the vacant post of Record Assistant. He also stated that as he was already promoted by the fourth respondent-school on 30-10-2002 and the same was approved by the second respondent by proceedings dated 12-09-2003 in the post of Record Assistant, there is no vacancy of Record Assistant as on the date of issuance of the impugned order dated 07-11-2003. If the respondents want to provide for compassionate appointment to the fifth respondent even after lapse of 14 years, they can consider the claim of the fifth respondent for the post of Attender, but not against the post of Record Assistant. Therefore, he prays to set aside the impugned order, dated
07-11-2003.

The learned counsel appearing for the petitioner in W.P.No.3397 of 2004 contended

that the father of the petitioner died on 29-07-1989, while he was in service as a Headmaster in the fourth respondent-school, and thereafter the petitioner submitted representation dated 24-03-1990 to the fourth respondent to consider his case for appointment as Record Assistant on compassionate grounds and the third respondent finally issued proceedings dated 07-11-2003 directing the second respondent to appoint the petitioner in the existing vacancy of Record Assistant. He also contended that in spite of making several representations, the fourth respondent has not taken any action and in the year 2001 when a Record Assistant post fell vacant, the petitioner applied for the same, but still his case was not considered and hence he prays to allow the writ petition.

The learned Government Pleader appearing for the respondents 1 to 3 contended that since the school of the fourth respondent is an aided school, there was a ban and therefore, the petitioner's case cannot be considered.

The learned counsel appearing for the fourth respondent-school contended that the fifth respondent was given promotion w.e.f. 01-09-2001 and therefore the fourth respondent is ready to appoint the petitioner as an Attender, but the petitioner is not accepting the same and hence he prays to dismiss the writ petition.

On the other hand, the learned counsel appearing for the fifth respondent, who filed W.P.No.14817 of 2004, contended that the fifth respondent was appointed as an Attender in the year 1994 and that his promotion to the post of Record Assistant was approved by the Regional Joint Director of School Education on 12-09-2003 and the said order has not been challenged, but the consequential order has been challenged and hence there are no grounds to allow the writ petition.

The purpose of providing appointment on compassionate grounds is to mitigate the hardship due to the death of the breadwinner in the family. Such appointment should be provided immediately to redeem the family in distress. The appointments on compassionate grounds have to be made in accordance with the Rules, Regulations, and Administrative instructions, duly taking into consideration the financial conditions of the family of the deceased.

It is pertinent to refer to a decision reported in **NATIONAL HYDROELECTRICAL POWER CORPN V. NANAK CHAND** , wherein it was held:

> "it is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the recruitment regarding

appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over the sudden financial crisis."

It is not in dispute that the father of the writ petitioner died on 29-07-1989 while working as Headmaster in fourth respondent-school. The claim of the petitioner is that since he passed 10th class and Hindi typewriting Higher and also is a physically handicapped person, he made a representation for appointment as Record Assistant on compassionate grounds.

It is also not in dispute that the recruitment in private and aided schools including the compassionate appointments is governed by the provisions in G.O.Ms.No.1, Education Department, dated 01-01-1994.

As seen from the reply affidavit in W.P.No.3397 of 2004, the petitioner made several representations to the authorities.

As a matter of fact, the first respondent called for the detailed report from the fourth respondent-school. The first respondent, after receipt of the report, stated that as there is no Record Assistant post available, the appointment of the petitioner as Record Assistant does not arise by virtue of his proceedings dated 16-02-1991 and the same is not challenged.

It is contended that as per the Circular Memo No.60681/Ser.A/2003-1, GAD, dated 12-08-2003, if there is no vacancy in the unit of appointment, the case shall be sent to the District Collector who is the nodal authority. The proceedings of the Government in Circular Memo dated 12-08-2003 cannot made applicable for the proceedings issued by the District Educational Officer 16-02-1991.

While the matter stood thus, one Record Assistant post fell vacant as one Raghukanth Rao, Record Assistant, retired

from service on attaining the age of superannuation dated

31-08-2001. When the petitioner made a representation to the second respondent-school, no action has been taken but the fourth respondent recommended the fifth respondent, who is an Attender, for promotion as Record Assistant. The second respondent accorded approval for promotion of the fifth respondent as Record Assistant by proceedings dated

12-09-2003, wherein it was stated that his case for compassionate appointment will be considered. The third respondent also issued proceedings dated 04-11-2003 requesting the first respondent not to communicate promotion orders to the fifth respondent as Record Assistant till the claim of the petitioner is disposed of as the matter had been referred to by the Government for orders. The third respondent also issued proceedings dated 07-11-2003 directing the Regional Joint Director of School Education to consider the case of the petitioner and appoint him as a Record Assistant. Since the case of the petitioner has been turned down on the ground that no vacancy by virtue of the proceedings of the first respondent dated 16-02-1991, no action has been taken by the petitioner thereafter, except submitting representations, till the vacancy arose in the year 2001, nearly after ten years. It is not stated how he is maintaining his family for the last ten years after the death of his father. Even at this belated stage, when the counsel for the fourth respondent-school made an offer to the petitioner to appoint him as an Attender in the vacancy that may be caused due to promotion of the fifth respondent, the petitioner did not show willingness for the post of Attender on compassionate grounds. The person who seeks appointment on compassionate grounds cannot claim particular post. He cannot have any right to be appointed on compassionate grounds.

To show the financial conditions of the family, the petitioner has not stated anything in the affidavit or in the additional affidavit. Whether the retirement benefits and other benefits have been received by them, what is the size of the family, whether there are any other earning members in the family, whether the family is in a distress condition, there is no factual foundation on all these aspects. The claim of the petitioner is based upon he is having a right of appointment on compassionate grounds for a particular post. After lapse of 14 years, even when the fourth respondent-school is offering the post of Attender, he is not willing to join. The affidavit is silent as to how he is maintaining the family for all these 14 years after the death of his father. Even in the representation of the wife of the deceased dated 13-02-2003, it is stated that she has four sons and one daughter and two sons are separated from her family. She has not stated about her two sons, who are separated from the family, and how she is maintaining the family, what is the pension she is getting.

Learned counsel for the petitioner strongly relied upon the scheme of

compassionate appointment to the dependents of the Government employees who died in harness and who are found missing where about are not known, as per the orders in
Circular Memo No.60681/Ser.A/2003-1, GAD, dated 12-08-2003. The circular instructions came into effect w.e.f. 2003. So, the instructions therein cannot be applicable to the case of the petitioner. There was a long delay so as to consider the case of the petitioner for appointment on compassionate grounds.
The petitioner cannot have any right of appointment in a particular post i.e., Record Assistant.

Therefore, the W.P.No.3397 of 2004 is devoid of merit and is dismissed accordingly. However, this order will not preclude the fourth respondent-school in considering the case of the petitioner for appointment on compassionate grounds as an Attender, if the petitioner is willing.

Insofar as the petitioner in W.P.No.14817 of 2004 is concerned, since he has been working as an Attender from 1984, his case was considered by the competent authority for promotion as Record Assistant. The impugned proceedings of the Commissioner and Director of School Education, dated
07-11-2003 in giving a direction to the second respondent to consider the case of the petitioner in W.P.No.3397 of 2004 and appoint him in the vacant post of Record Assistant is without any basis and application of mind inasmuch as the said direction was given merely after lapse of 14 years. The impugned proceedings does not contain any reasons at all and also the basis for giving such a direction to appoint the petitioner as Record Assistant in preference to the person who is already working as an Attender in the same school. The appointment of the fifth respondent vide proceedings in Rc.No.4007/A1/2003, dated 12-09-2003, whereunder the Regional Joint Director approved the promotion of the petitioner in W.P.No.14817 of 2004 as Record Assistant with immediate effect in the fourth respondent-school, has not been challenged so far.

Therefore, the W.P.No.14817 of 2004 is allowed quashing the impugned proceedings dated 07-11-2003 and confirming the proceedings of the Regional Joint Director-second respondent, dated 12-09-2003. No order as to costs.

JUSTICE K.C.BHANU

Date: 05-07-2005.

YCR

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki the Acting Chief Justice

on this Tuesday the Fifth Day of July Two thousand and five.

To

1 The District Educational Officer, Hyderabad.

2 The Regional Joint Director of School Education, Kachiguda, Hyderabad

3 The Commissioner & Directorof of School Education, A.P.,

Hyderabad
4. 2 CCs to G.P. for School Education, High Court of A.P. Buildings, Hyderabad.

5. 2 C.D. copies.